



DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning Certain Jet Fuel

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (“CBP”) has issued a final determination concerning the country of origin of certain jet fuel. Based upon the facts presented, CBP has concluded that the country of origin of this jet fuel is India for purposes of U.S. Government procurement.

DATES: The final determination was issued on November 23, 2018. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within [insert 30 days from date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Teresa M. Frazier, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade (202) 325-0139.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on 11/23/18, pursuant to subpart B of Part 177, U.S. Customs and Border Protection Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of certain jet fuel, which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, HQ H272678, was issued under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as

amended (19 U.S.C. 2511-18). In the final determination, CBP concluded that the processing in India results in a substantial transformation. Therefore, the country of origin of the jet fuel is India for purposes of U.S. Government procurement. Section 177.29, CBP Regulations (19 CFR 177.29), provides that a notice of final determination shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: November 23, 2018.

Alice A. Kipel,
*Executive Director,
Regulations and Rulings,
Office of Trade.*

H292678

November 23, 2018

OT:RR:CTF:VS H292678 TMF

CATEGORY: Origin

Patrick Devaney, Director
ANOI, Inc.
111 W. Ocean Blvd, Suite 1590
Long Beach, CA 90802

Re: U.S. Government Procurement; Country of Origin of Jet Fuel; Title III, Trade Agreements Act of 1979 (19 U.S.C. § 2511, *et seq.*); Subpart B, Part 177, CBP Regulations

Dear Mr. Devaney:

This is in response to your letter dated December 2, 2017, requesting a final determination, on behalf of your company, ANOI, Inc., concerning the country of origin of certain jet fuel pursuant to subpart B of Part 177 of the U.S. Customs and Border Protection (“CBP”) Regulations (19 C.F.R. § 177.21 *et seq.*). ANOI, Inc., submitted an electronic ruling request to the National Commodity Specialist Division (“NCS”) which was sent to our office.

We note that Anoi is a party-at-interest within the meaning of 19 C.F.R. § 177.22(d)(1) and is entitled to request this final determination.

FACTS:

Anoi, Inc. produces jet fuel (identified as JP5) in India from U.S. or Mexican petroleum crude oil. The JP5 is intended to be sold to the U.S. Defense Logistics Agency (“DLA”) in a solicitation that requires compliance with the Trade Agreements Act of 1979 (“TAA”). In your submission, you state that an intermediate grade, western Texas and/or Mexican oil will be imported to the Reliance Refinery in Jamnagar, India. At the refinery, you state that “there will be a ‘one-step’ transformation of crude to straight-run distillate.” The process consists of desalting and heating the crude, and then distilling out the sulfur from the middle distillate kerosene with the use of a Merox Oxidation unit that removes the sulfur from the kerosene jet fuel. DLA also requires certain additives to achieve JP5 jet fuel MILSPEC.

ISSUE:

What is the country of origin of the JP5 jet fuel for purposes of U.S. Government procurement?

LAW AND ANALYSIS:

CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain “Buy American” restrictions in U.S. law or practice for products offered for sale to the U.S. Government, pursuant to subpart B of Part 177, 19 C.F.R. § 177.21 *et seq.*, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 *et seq.*).

Under the rule of origin set forth under 19 U.S.C. § 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also 19 C.F.R. § 177.22(a).

A substantial transformation occurs when an article emerges from a process with a new name, character, and use different from that possessed by the article prior to processing. A substantial transformation will not result from a minor manufacturing or combining process that leaves the identity of the article intact. *See United States v. Gibson-Thomsen Co.*, 27 C.C.P.A. 267 (1940); and *National Juice Products Ass’n v. United States*, 628 F. Supp. 978 (Ct. Int’l Trade 1986).

You claim that the country of origin is either the United States or Mexico for two reasons. First, you state that the source of crude is “an embargo issue for feedstock in the Solicitation.” Second, you claim there is no “double transformation” as in CBP Headquarters Ruling Letters (“HQ”) 555032, dated September 23, 1988 and HQ 562387, dated July 30, 2002, because the processes in those situations involved “old technology”/mixture-based processes that consisted of hydro-desulfurization, platformers and naptha-blends. However, in this case, ANOI, Inc. proposes to refine, by the process of distillation, and additional processes, U.S. or Mexican origin, petroleum crude oil at the Reliance Petroleum Refinery in Jamnagar, India into U.S. JP5 specification jet fuel. You state that a “straight-run” process occurs because it uses a Merox filter

unit that involves no chemical mixing except for inclusion of the JP5 additive, which is required by DLA. Accordingly, you claim no substantial transformation occurs in India.

In this case, we find the JP5 specification jet fuel is clearly a new and different article with a new name, character, and use from that of the petroleum crude oil from which it was refined. Although there may be no double substantial transformation, the process to create jet fuel from straight crude oil to straight-run distillate still involves desalting and the application of heat distillation coupled with the utilization of the Merox Oxidation unit to remove sulfur, which results in the creation of jet fuel. According to our Laboratories and Scientific Services Directorate, the petroleum crude oil is substantially transformed into JP5 by the petroleum refining process of distillation. This finding is consistent with our decision in HQ 555032, where a first substantial transformation was found to occur after distillation. Therefore, we find the country of origin of the produced JP5 will be the country in which the substantial transformation (distillation) occurs, namely India.

HOLDING:

Based upon the specific facts of this case, the country of origin of the JP5 jet fuel for purposes of U.S. Government procurement will be India.

Notice of this final determination will be given in the Federal Register, as required by 19 C.F.R. § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 C.F.R. § 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 C.F.R. § 177.30, any party-at-interest may, within 30 days of publication of the Federal Register Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Alice A. Kipel, Executive Director
Regulations & Rulings
Office of Trade

[FR Doc. 2018-26168 Filed: 11/30/2018 8:45 am; Publication Date: 12/3/2018]